

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2) (b))

Description of the case

C-482 No. 287/06

Gopal Singh S/o Babu Ram and Others

Vs

State of Uttaranchal and others.

Approved for reporting

~~Not approved for reporting~~

Date of decision 13.11.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINIAL

C-482 No. 287 OF 2006

1. Gopal Singh, S/o Babu Ram,
2. Babu Ram, S/o Mishri Lal,
3. Smt. Bhagwati, W/o Babu Ram,
4. Kamal Singh , S/o Babu Ram,
5. Jaibai, W/o Kamal Singh,
6. Guddi, W/o Nihal Singh,

R/o Village Pakhwara Majra Bhagwala, Swar District-
Rmapur. Applicants.

Versus

1. State of Uttaranchal.
2. Prem Singh, S/o Umrao Singh, R/o Village Banna Khera,
P.S. Bzpur District-Udham Singh Nagar.

.....Respondents.

Dated: 13.11.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Ahrar Baig, Counsel for the applicants,
Mr. S.K. Mandal, counsel for the respondent no.2 and A.G.A.
for the State .

2. By the present petition under Section 482 of the
Code of Criminal Procedure, the applicants have prayed for
quashing the FIR, Charge-Sheet dated 31.10.2005 and the order
passed by the Additional Civil Judge (J.D.) J.M. 1st Class taking
cognizance on 22.11.2005.

3. Briefly stated, a perusal of the FIR shows that the
Case under Section 498-A/323/504/506 of the Indian Penal
Code has been registered against the applicants mentioned in
the present application.

4. The allegation in the FIR shows that the parties were married on 13th May, 2005 and the dispute arose on the ground that the father and mother of Smt. Mamta has not given proper dowry and therefore, she has been subjected to cruelty. There are allegations also with regard to the physical torture on account of the fact that dowry was not given by the father and mother of Smt. Mamta.

5. A charge-Sheet has also been submitted where the allegations have been made against the accused- applicants.

6. A counter affidavit has been filed on behalf of the complainant/respondent no. 2 father of Smt. Mamta, who has stated that on 6th May, 2006, he along with her daughter Smt. Mamta went to appear before the marriage-counseling cell at Rudrapur but the applicants have assaulted the daughter of the deponent namely Smt. Mamta and an application in this respect has been sent to the S.S.P. on 30.05.2006.

7. In view of the aforesaid, it is a case where the question of fact is involved as to whether Smt. Mamta has been subjected to physical cruelty and further the ingredients of Section 498-A of the I.P.C. are satisfied. After investigation a charge sheet having already been submitted, the matter requires trial by the court concerned.

8. Both the parties will be at liberty to lead the evidence regarding charges levelled against the applicants.

9. It is well settled that interference under Section 482 of the Code of Criminal Procedure can only be made when on

the fact of the FIR itself, no case is made out against the applicants.

10. Since the disputed question with regard to 498-A, 323 is involved, therefore, prima facie no case can be made out for interference under Section 482 of the Code of Criminal Procedure.

11. In ***Union of India Vs. Praksah P. Hinduja and another*** 2003 SCC (Cri) 1314, the Apex Court has held as under:

“ 9... The grounds on which the prosecution initiated against an accused can also be quashed by the High Court in exercise of Power conferred by Section 482 CrPC has been settled by a catena of decisions of this Court rendered in *R.P. Kapur v. State of Punjab* AIR 1960 Sc 886, *Madhu Limaye v. State of Maharashtra* (1977) 4 SCC 551, *Municipal Corpn. Of Delhi v. Ram Kishan Rohtagi* (1983) 1 SCC 1 and *Raj Kapoor v. State* (1980) 1 SCC 43. The matters was examined in considerable detail in *State of Haryana vs. Bhajan Lal* 1992 Supp (1) SCC 355 and after review of practically all the earlier decision, the Court in para 108 of the Report laid down the grounds on which power under Section 482 CrPC can be exercised to quash the criminal proceedings and basically they are: (1) where the allegations made in the FIR or complainant, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused, (2) where the uncontroverted allegations made in the

FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

10. *The principal question which, therefore, requires consideration is whether the court can go into the validity or otherwise of investigation done by the authorities charged with the duty of investigation under the relevant statutes and where any error or illegality committed during the course of investigation would do vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid.”*

12. In the present case, I do not see any ground to interfere under Section 482 CrPC at this stage.

13. In ***State of Haryana and others v. Ch. Bhajan Lal and others AIR 1992 SC 604***, it has also been held that whether the allegations in the FIR do constitute cognizable offence, only then the interference under Section 482 of the Cr. P.C. can be made.

14. The bail application of Smt. Bhagwati Devi, Babu Ram, Kamal Singh, Jai Bai and Guddi shall be considered on the same day being women and old persons. However, the bail application of Sri Gopal Singh shall be considered expeditiously.

15. Subject to the above for consideration of the bail applications, petition under 482 CrPC is dismissed along with all the pending applications. No order as to costs.

(Rajesh Tandon, J.)

13.11.2006
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